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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/797,393

03/10/2004

Hans Sejr Olsen

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EXAMINER

HA, JULIE

ART UNIT

PAPER NUMBER

1654

MAIL DATE

DELIVERY MODE

03/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/797,393</p>	<p>Applicant(s) OLSEN ET AL.</p>	
	<p>Examiner JULIE HA</p>	<p>Art Unit 1654</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 15 February 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 97-100, 104-149.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please see continuation below.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Anish Gupta/
Primary Examiner, Art Unit 1654

11. Continuation: Claims 97-98, 104-118, 123-127, 134-135 and 138-149 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lutzen et al (US Patent No. 4,316,956) in view of Yoshizumi et al (US Patent No. 4,092,434).

Applicant argues that Lutzen does not teach or suggest a pretreatment step for a period of between 20 minutes and 1.5 hours. Applicant argues that Yoshizumi et al "disclosure includes a liquefaction step at a temperature above the initial gelatinization temperature of the starch, the starch is partially gelatinized prior to saccharification and fermentation. However, Yoshizumi et al do not disclose a process for fermenting granular starch in the presence of an acid alpha-amylase, a glucoamylase and a yeast, and do not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours."

For the reasons set forth in the previous office action, the rejection is maintained.

Claims 97-100, 116-122, 128-130, 132-133, 137 and 138-149 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lutzen et al (US Patent No. 4,316,956) in view of Lantero et al (US Patent No. 5,231,017).

Applicant argues that Lutzen does not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours. Applicant argues that Lantero et al "do not teach a process for fermenting granular starch in the presence of an acid alpha-amylase, a glucoamylase and a yeast, and do not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours."

For the reasons set forth in the previous office action, the rejection is maintained.

Claims 97-98 and 132 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lutzen (US Patent No. 4,316,956) in view of Katkocin et al (US Patent No. 4,536,477).

Applicant argues that Lutzen does not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours. Applicant argues that Katkocin et al "do not disclose a process for fermenting granular starch in the presence of an acid alpha-amylase, a glucoamylase and a yeast, and do not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours."

For the reasons set forth in the previous office action, the rejection is maintained.

Claims 97-98, 122 and 130-131 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lutzen (US Patent No. 4,316,956) in view of Veit et al (PG Pub 2004/0091983).

Applicant argues that Lutzen does not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours. Applicant argues that Veit et al "do not disclose a process for fermenting granular starch in the presence of an acid alpha-amylase, a glucoamylase and a yeast, and do not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours."

For the reasons set forth in the previous office action, the rejection is maintained.

Claims 97-98 and 136 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lutzen (US Patent No. 4,316,956) in view of James et al (US Patent No. 3,880,742).

Applicant argues that Lutzen does not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours. Applicant argues that James et al "do not disclose a process for fermenting granular starch in the presence of an acid alpha-amylase, a glucoamylase and a yeast, and do not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours."

For the reasons set forth in the previous office action, the rejection is maintained.

Claims 97-98 and 134-135 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lutzen (US Patent No. 4,316,956) in view of Leach et al (US Patent No. 3,922,196) and Gray et al (Journal of Bacteriology, 1986, 166(2): 635-643).

Applicant argues that Lutzen does not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours. Applicant argues that Leach et al and Gray et al "do not teach a process for fermenting granular starch in the presence of alpha acid-amylase, a glucoamylase and a yeast at a temperature between 10C and 35C, and do not teach or suggest a pretreatment step for a period between 20 minutes and 1.5 hours."

For the reasons set forth in the previous office action, the rejection is maintained.

Rejection under 35 U.S.C. 102(e) is hereby withdrawn due to Applicant's arguments.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Ha whose telephone number is 571-272-5982. The examiner can normally be reached on Mon-Thurs, 5:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.